



# EUROPEAN ASYLUM AND IMMIGRATION

*What European lawyers need to know*

26 May 2025  
09:00-11:00 CET  
Zoom Webinar



Co-funded by the European Union



# EUROPEAN ASYLUM AND IMMIGRATION

*What European lawyers need to know*

Tamas Molnar

**The role of the EU Charter of Fundamental Rights in asylum and migration  
matters**

26 May 2025, 09:00-11:00 CET, Online on Zoom



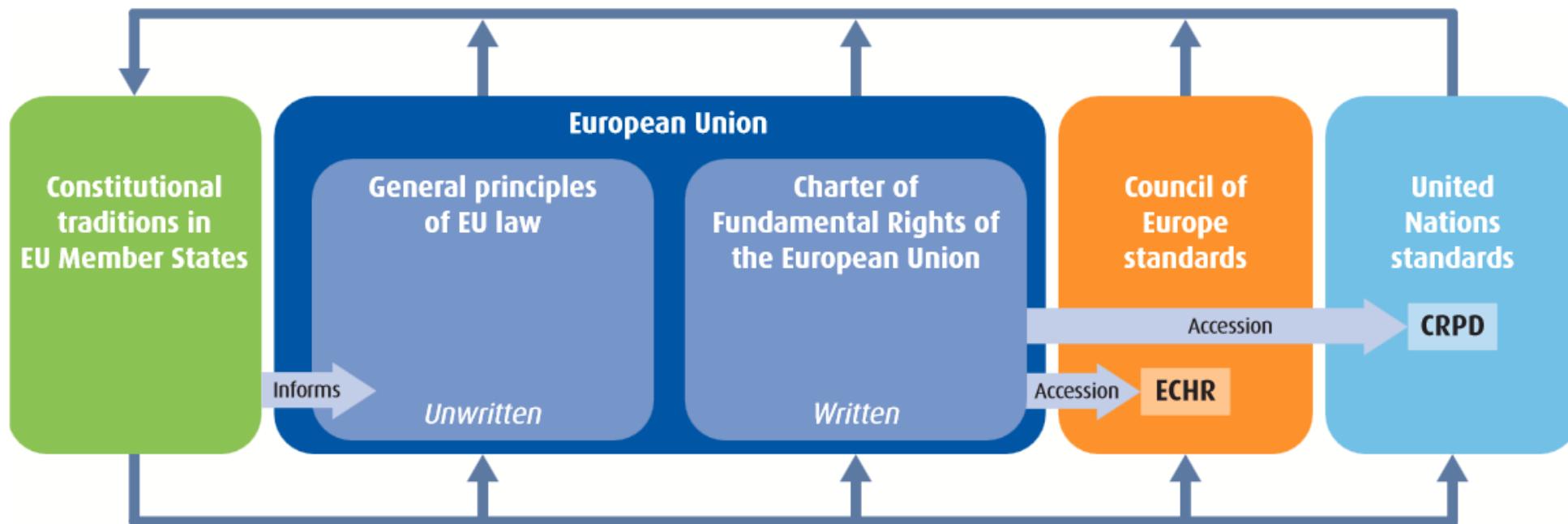
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# 1. Legal nature of the EU Charter of Fundamental Rights

- Having the same legal effect as the EU Treaties (primary law) since 1.12.2009 [proclaimed in 2000 – 2025: 25<sup>th</sup> anniversary]
- CJEU has jurisdiction over it + within AFSJ (ever growing case-law)
- Secondary EU law & int'l agreements concluded by EU must be in conformity with it (if not → action for annulment before the CJEU)
- Additional normative framework for interpreting secondary EU legislation
- “Bill of rights of the EU” → it contains 54 Articles grouped into 7 Chapters

I. Dignity	II. Freedom	III. Equality	IV. Solidarity
V. Citizens rights	VI. Justice	VII. General provisions, incl. interpretation	

## *Interactions of the layers/substantive rights in the EU*



Equivalent  
protection to ECHR

More extensive than  
ECHR

No ECHR equivalent

EU context-specific

Preamble	Peace – common values	Universal values	Diversity, etc	Rights more visible	Reaffirms const. and int'l rights	Rights, duties, responsibilities	Rights, freedoms and principles
I Dignity (Articles 1–5)	1 Human dignity	2 Life	3 Integrity of the person	4 Torture and inhuman degrading treatment or punishment	5 Slavery and forced labour		
II Freedoms (Articles 6–19)	6 Liberty and security	7 Private and family life	8 Personal data	9 Marry and found family	10 Thought conscience and religion		
	11 Expression and information	12 Assembly and association	13 Arts and sciences	14 Education	15 Choose occupation and engage in work		
III Equality (Articles 20–26)	16 Conduct a business	17 Property	18 Asylum	19 Removal, expulsion or extradition			
IV Solidarity (Articles 27–38)	20 Equality before the law	21 Non-discrimination	22 Cultural, religious and linguistic diversity	23 Equality: men and women	24 The child	25 Elderly	26 Integration of persons with disabilities
	27 Workers right to information and consultation	28 collective bargaining and action	29 Access to placement services	30 Unjustified dismissal	31 Fair and just working conditions		
V Citizens' rights (Articles 39–46)	32 Prohibition of child labour and protection of young people at work	33 Family and professional life	34 Social security and assistance	35 Health care	36 Access to services of general economic interest		
	37 Environmental protection	38 Consumer protection					
VI Justice (Articles 47–50)	39 Vote and stand as candidate to EP	40 Vote and stand as candidate at municipal elections	41 Good administration	42 Access to documents	43 European ombudsman		
VII General provisions (Articles 51–54)	44 Petition (EP)	45 Movement and residence	46 Diplomatic and consular protection				
	47 Effective remedy and fair trial	48 Presumption of innocence and right of defence	49 Legality and proportionality of criminal offences and penalties	50 <i>Ne bis in idem</i>			
	51 Application	52 Scope and interpretation	53 Level of protection	54 Prohibition of abuse of rights			

## 2. Scope & Interpretation of the Charter

- **Material scope** (Art.51(1)): “*The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union [...] and to the Member States only when they are implementing Union law*” (CJEU, Åkerberg: when MS act “in the scope of Union law” → broader)
- **Territorial scope**: not governed by the EU territory but by exercise of jurisdiction → in certain situations where EU/MS operate beyond the territory of the EU, CFR can apply extraterritorially. **PL**: Protocol No. 30; **IE**: Protocol No. 21 (only for those AFSJ acts opted in); **DK**: Protocol No. 22 (only for those AFSJ acts opted in)
- **Interpretation** of CFR: in accordance with Title VII + in particular with ECHR; see also Explanations. Limitation of rights: Art. 52(1)
- **Safeguard for level of human rights protection** (Art.53): no CFR right shall be interpreted as restricting human rights recognized in other HR conventions incl. ECHR (also: 1951 Geneva Convention, other conventions related to migration/asylum, e.g. CoE Istanbul Convention)

## CJEU Overview – judgments and pending cases of the CJEU

Asylum Procedures I and II Directive 2005/85 and 2013/32 judgments		Date	Case nr	GC	EU:C:	Subject
Parliament / Council	6 May 2008	<a href="#">C-133/06</a>		GC	2008:257	APD I; list of safe countries of origin
Diouf	28 July 2011	<a href="#">C-69/10</a>			2011:524	APD I Art. 39; accelerated procedure; remedies
H.I.D. & B.A.	31 Jan 2013	<a href="#">C-175/11</a>			2013:45	APD I Art. 23; accelerated procedure; remedies
Tall	17 Dec 2015	<a href="#">C-239/14</a>			2015:824	APD I Art. 39; effective remedy and multiple asylum claim
Danqua	20 Oct 2016	<a href="#">C-429/15</a>			2016:789	dealing with application within reasonable time
Sacko	26 Jul 2017	<a href="#">C-348/16</a>			2017:591	APD II Art. 46; effective remedy
Gnandi	19 Jun 2018	<a href="#">C-181/16</a>		GC	2018:465	Charter Art. 47; suspensive effect and effective remedy
C. a.o.	5 Jul 2018	<a href="#">C-269/18 PPU</a>			2018:544	APD II Art. 46(8); suspensory effect
A.	25 Jul 2018	<a href="#">C-404/17</a>			2018:588	APD II Art. 31+33; country of origin info; manifestly unfounded application
Alheto	25 Jul 2018	<a href="#">C-585/16</a>		GC	2018:584	APD II Art. 46; effective remedy; Palestinian
X.	26 Sep 2018	<a href="#">C-175/17</a>			2018:776	APD I Art. 39; Charter Art. 47; suspensory effect of appeal only at first instance
X. & Y.	26 Sep 2018	<a href="#">C-180/17</a>			2018:775	APD II Art. 46; Charter Art. 47; suspensory effect of appeal only at first instance
F.R.	27 Sep 2018	<a href="#">C-422/18 PPU</a>			2018:784	APD II Art. 46; suspensory effect of appeal
Ahmedbekova	4 Oct 2018	<a href="#">C-652/16</a>			2018:801	APD II Art. 33+46; direct effect; application family member
Fathi	4 Oct 2018	<a href="#">C-56/17</a>			2018:803	APD II Art. 46; effective remedy
E.G.	18 Oct 2018	<a href="#">C-662/17</a>			2018:847	APD II Art. 46(2); subsidiary protection
Bashar Ibrahim	19 Mar 2019	<a href="#">C-297/17+438/17</a>		GC	2019:219	APD II Art. 52; transitional provision and subs. protection
Torubarov	29 Jul 2019	<a href="#">C-556/17</a>		GC	2019:626	APD II Art. 46(3); power to amend decisions of competent authority
Hamed & Omar	13 Nov 2019	<a href="#">C-540+541/17</a>			2019:964	APD II Art. 33(2); inadequate conditions for refugees
P.G.	19 Mar 2020	<a href="#">C-406/18</a>			2020:216	APD II Art. 31; Charter Art. 47; effective judicial remedy
L.H.	19 Mar 2020	<a href="#">C-564/18</a>			2020:218	APD II Art. 33; Charter Art. 47; inadmissible applications
F.M.S. a.o.	14 May 2020	<a href="#">C-924+925/19 PPU</a>		GC	2020:367	APD II Art. 33(2); Hungarian Border; detention
V.L.	25 Jun 2020	<a href="#">C-36/20 PPU</a>			2020:495	APD II Art. 6+26; competent authorities
Addis	16 Jul 2020	<a href="#">C-517/17</a>			2020:579	APD II Art. 14+34; admissibility of appl. in 2nd MS on the ground of no access to granted rights in 1st MS
J.P.	9 Sep 2020	<a href="#">C-651/19</a>			2020:681	APD II Art. 46; effective remedy, short term
M.S. a.o.	10 Dec 2020	<a href="#">C-616/19</a>			2020:1010	APD II Art. 25(2); MS concerned; further application

### 3. Migration-related rights under the Charter – an Overview

- Several rights enshrined in the CFR apply to everyone, regardless of nationality and third-country nationals' migration status → e.g. human dignity, right to life, right to physical integrity, prohibition of torture & other forms of ill-treatment, right to liberty, right to family life, non-discrimination, rights of the child, right to an effective remedy etc.
- Also, there are specific CFR rights applicable to **migrants**, **asylum seekers** and **refugees** (inspired by other HR conventions):
  - **right to asylum**
  - ***non-refoulement***
  - **prohibition of collective expulsion**

## 4. Charter rights relevant for migrants/asylum seekers

### 1) Charter rights applicable to everyone relevant for migrants/asylum seekers [selected ones]

- right to human dignity (Art. 1), cf. CJEU: *CIMADE & GISTI, Saciri*
- prohibition of torture, inhuman and degrading treatment (Art. 4), cf. CJEU: *N.S. & M.E., CIMADE & GISTI, Saciri*
- right to liberty and security (Art. 6) → immigration detention as a measure of last resort, ATD! Cf. CJEU: *J.N.* (validity of RCD)
- rights of the child (Art. 24), cf. CJEU: *Saciri; MA & Others [BIC]; T.Q.*
- right to an effective remedy & to fair trial (Art. 47), cf. CJEU: *Diouf, M.M., Tall, El Hassani* (visa)

## 4. Charter rights relevant for migrants/asylum seekers (cont.)

### 2) Charter rights explicitly protecting migrants/asylum seekers:

- **right to asylum** (Art.18) – referring to 1951 Geneva Convention/1967 NY Protocol; cf. CJEU: *Bolbol, El Kott* (PAL refugees), *Abdulla and Others* (cessation of int'l protection); infringement procedures against HU
- **principle of *non-refoulement*** (Art.19(2)), cf. CJEU: *El Kott, M'Bodj, Tall* (in asylum context); and *Abdida, Ararat* (return context)
- **protection against collective expulsion** (Art.19(1)) – inspired by Art. 4 of Protocol No. 4 to ECHR (explicit) & ICCPR, Art. 13 (implied)

For the CJEU Charter-related jurisprudence, handy tool: “**Charterpedia<https://fra.europa.eu/en/eu-charter> + mobile app!**

## 5. Asylum cases – selected examples

### 1) Case C-69/10, *Samba Diouf*, judgment of 28 July 2011

Accelerated asylum procedure; legal action against it; **Art. 47 CFR**: right to effective judicial protection → Asylum Procedures Directive to be interpreted accordingly

### 2) Joined cases C-411/10 and C-493/10, *N.S. and M.E. e.a.*, judgment of 21 December 2011

- Facts: asylum seekers travelling through EU MSs, including EL; destination countries (UK, IE) want them to transfer them back to EL using Dublin II Reg.
- Interpretation of Dublin II Reg., transfer of asylum applicants as violating **Art. 4 CFR**: prohibition of torture & other forms of ill-treatment

## 5. Asylum cases – selected examples (cont.)

### Joined cases C-411/10 and C-493/10, *N.S. & M.E. e.a...* (cont.)

Charter: main legal argument. Key findings :

- Its scope *ratione materiae* better defined (discretionary power exercised by MS = implementing EU law)
- ECtHR case law followed (M.S.S. judgment of 21 Jan. 2011)
- Presumption that MSs comply with CFR, Geneva Convention and ECHR must be regarded as **rebuttable**; and a that conclusive presumption that a MS responsible under the Dublin II Reg. observes fundamental rights is **precluded** under EU law
- "Article 4 of the Charter [...] must be interpreted as meaning that the Member States [...], may not transfer an asylum seeker to the 'Member State responsible' within the meaning of [Dublin II Reg.] where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment." (para. 106)

## 5. Asylum cases – selected examples (cont.)

### 3) Case C-601/15 (PPU), **J.N.**, judgment of 15 Febr. 2016

- Detention of a rejected asylum applicant, who has committed multiple crimes, in NL
- Art. 8(3)(e) RCD as a detention ground [to protect national security & public order] = limitation on the right to liberty guaranteed by **Art. 6 CFR** (having the same meaning & scope as Article 5 ECHR).
- CJEU emphasised the legitimate interest and objective of detaining persons to protect national security and public order, which also contributed to protecting the rights of others, noting that **Art. 6 CFR** also guaranteed the right to security → RCD's validity upheld (EU legislature had struck the correct balance)

## 5. Asylum cases – selected examples (cont.)

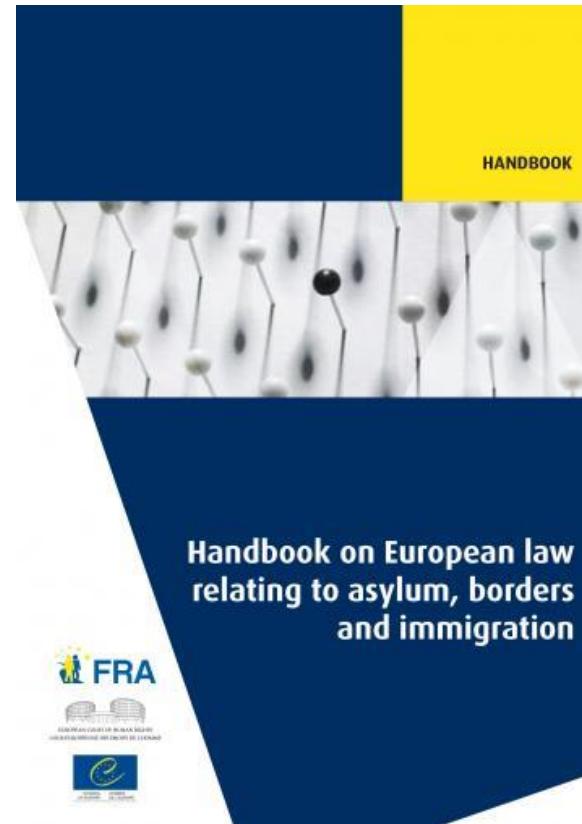
### 4) Case C-823/21, **COM v. Hungary**, judgment of 22 June 2023

- Infringement → incompatibility of HU “embassy asylum procedure” legislation with EU law, incl. the Charter
- Prior submission of a ‘declaration of intent’ is not laid down by the Asylum Procedures Directive + contrary to its objective of ensuring effective, easy and rapid access to asylum procedures, flowing also from **Art. 18 CFR** [right to asylum]
- HU legislation deprived asylum applicants the effective enjoyment of their right to seek asylum as guaranteed by the **CFR**

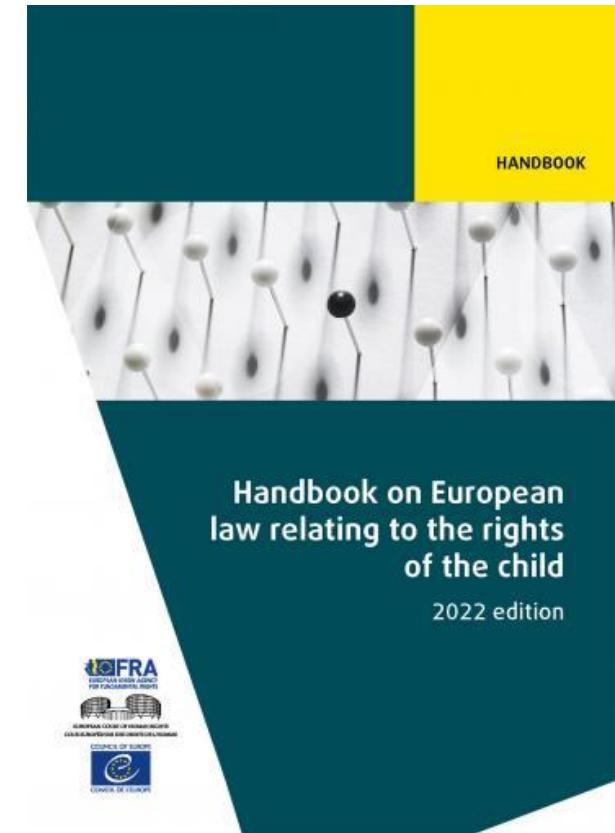
## 6. CJEU and the Charter in migration/asylum matters

- Charter = comparable to MS constitutions' chapters on fundamental rights
- In AFSJ, individual/fundamental rights are directly concerned + asylum seekers/refugees: vulnerable groups ("laboratory")
- CFR mostly used in migration/asylum cases → CJEU filled in the gaps in the EU migration/asylum *acquis*, relying also on the Charter [living instrument]
- Migration & asylum matters: increasingly represent a crucial test case for the CJEU as a fundamental rights court (see e.g. the number of judgments and pending cases → <http://www.ru.nl/law/cmr/documentation/cmr-series/cjeu-overview/>)
- Charter: plays an important role when interpreting EU migration/asylum *acquis* and checking its compatibility with primary EU law → "human rightisation" of these policy areas by CJEU

Σ: a beautiful friendship between the CJEU and the Charter



# FRA publications



## - Further reading -

- ✓ FRA, [\*Guidance – Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level\*](#) (Publications Office of the EU, October 2018) [available in all EU official languages]
- ✓ FRA and Council of Europe/European Court of Human Rights, [\*Handbook on European law relating to asylum, borders and immigration. Edition 2020\*](#) (Publications Office of the EU, December 2020) [available in EN, FR, DE, IT, ES, and BG, EL, FI, HR, HU, LT, LV, PL, RO, SI]
- ✓ FRA and Council of Europe/European Court of Human Rights, [\*Handbook on European law relating to the rights of the child – 2022 edition\*](#) (Publications Office of the EU, April 2022), section 9 [Migration and asylum]



# EUROPEAN ASYLUM AND IMMIGRATION

*What European lawyers need to know*

Esther Pozo Vera

**The Pact on Migration and Asylum**

26 May 2025, 09:00-11:00 CET, Online on Zoom



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# What is the Pact on Migration and Asylum?



**A European system to control our borders, ensuring fairness between Member States and protecting people in need.**

- Sets clear EU wide rules to manage migration together
- Allows the EU to move from ad-hoc to long-term solutions
- Based on **solidarity, responsibility, and respect** for human rights



*« After years of intense work, the Pact on Migration and Asylum becomes a reality. It is a huge achievement for Europe....Migration is a European challenge which must be met with a European solution. One that is effective, and both fair and firm. This is what the Pact on Migration and Asylum delivers. It will be making a real difference for all Europeans.»*

President **von der Leyen**  
April 2024



# A common EU system to manage migration



**Secure external borders**



**Fast and efficient procedures**



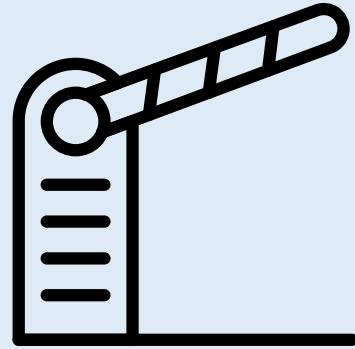
**Effective system of solidarity and responsibility**



**Embedding migration in international partnerships**



# A common EU system to manage migration



**Secure external  
borders**



# Robust screening

All irregular migrants will be registered and subject to identification, security, and health checks. The new Screening Regulation closes a gap in the existing framework by ensuring:



**Uniform health,  
identity and  
security checks**



**Screening will  
have to be  
completed in a  
Limited timeframe**



**Quick  
channeling  
to the right  
procedures**



**Independent  
monitoring of **respect**  
for fundamental  
rights**





# Border procedure and returns

 The border procedure will be mandatory for asylum applicants who are unlikely to be in need of international protection, mislead the authorities or present a security risk. For those who are proven not to be in need of protection and who don't have the right to stay, efficient returns will take place.



**Free legal  
counselling**



**Free legal assistance  
And representation**



**More attention to  
vulnerable  
individuals**



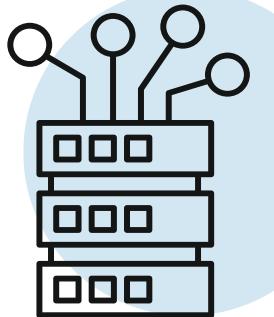
**Adequate  
capacity –  
30,000: ensuring  
balance and  
preventing  
overcrowding**

Independent  
monitoring of **respect  
for fundamental  
rights**





# Eurodac asylum and migration database



**The Eurodac Regulation turns the existing database into a fully-fledged asylum and migration database, ensuring clear identification of everyone who enters the EU as an asylum seeker or an irregular migrant.**





# A common EU system to manage migration



**Fast and efficient  
procedures**



# Clear asylum rules



Simpler and clearer procedure, with reasonable time-limits for applicants to accede to the procedure and for concluding the examination of applications;



More flexibility for Member States to organise their reception systems effectively.



More safeguards and guarantees for all applicants and particularly for vulnerable groups and children.



# Guaranteeing people's rights



## Under the Asylum Procedure Regulation,



Free legal counselling during the administrative stage of the procedure;



Specific focus on children (new rules on representation and age assessment);



Free legal assistance and representation during the appeal.



## The Reception Conditions Directive



Establishes harmonised standards across the EU, ensuring adequate living conditions for asylum seekers;



Strengthens safeguards, particularly for vulnerable groups;



Guarantees improves integration processes.



# EU standards for refugee status qualification



Fostering greater convergence of asylum practices and decisions:

- ✓ Obligation for Member States to take into account up-to-date EU Agency for Asylum guidance on countries of origin;
- ✓ Assessing whether there is an internal protection alternative
- ✓ Withdrawing international protection status



Clarifying rights and obligations of beneficiaries:

- ✓ Providing harmonised information to beneficiaries and a clear obligation for Member States to issue residence permits within 90 days in a harmonised format;
- ✓ Reinforcing the rights of unaccompanied minors
- ✓ Reinforcing integration



# Preventing abuses



Asylum-seekers must apply for international protection in the Member State of first entry and remain there until the Member State responsible is determined.



Identify people, keep track of double applications & Increase the ability of Member States to prevent secondary movements



Not complying with obligations has important consequences (implicit withdrawal, border or accelerated procedures, withdrawal of material reception).



Beneficiaries that move to another Member State will need longer time of residence to become eligible for long-time residence status





# A common EU system to manage migration



**Effective system  
of solidarity and  
responsibility**



# Permanent solidarity framework



1

Clear steps to ensure that Member States receive the solidarity measures needed. In particular:



Annual reports assessing the migration situation and identifying Member States under pressure, at risk thereof or facing a significant migratory situation;



A Solidarity Pool that will include pledges from Member State for each type of solidarity contribution (min 30,000/EUR 600 million);



An EU Solidarity Coordinator responsible for effective implementation

2

Choice by each Member State on the type of solidarity to be provided



Relocation



Financial contribution



In-kind support

3

Self-enforcing mechanisms



# Clearer rules on responsibility for asylum applications and preventing secondary movements



The new Regulation enhances the responsibility criteria and the rules for determining the Member State responsible for assessing an asylum application.

- Introducing the obligation to apply for protection in the Member State of first entry; security cases responsibility of Member State of first entry
- Longer timelines for responsibility (less risks of cessation / shift of responsibility)
- The 'take-back' procedure to return people from one Member State to another is more effective.
- If applicant is not in the MS where s/he is supposed to be, only basic needs covered
- Free legal counselling for all applicants and enhanced information rights
- Reinforcing family criteria and prioritization of family cases / family tracing
- Enhanced information rights
- More protection for children





# Crisis protocols and action against instrumentalisation



The Crisis Regulation provides quick protocols for situations of crisis and instrumentalisation of migrants, to be supplemented with operational assistance and funding in cases of emergency.



In these situations, and only in exceptional circumstances and for the shortest time necessary:  
the enhanced solidarity and support measures could take the form of



relocations



financial  
contributions



alternative solidarity  
measures

or a combination of these



# Balance Solidarity - Responsibility



Mandatory but flexible solidarity

Solidarity threshold & mandatory fair-share

Mandatory responsibility offsets

Fairer Dublin rules

30,000 people solidarity  
EUR 600 m

30,000 adequate capacity

Mandatory but adaptable Border Procedures

Adequate capacity at EU and national level

Derogations if adequate capacity reached & annual cap

Stricter and more efficient Dublin rules

Cessation Border Procedure

Family

Longer responsib. time limits

Take back notification

SAR

Safeguards (self-enforcing mechanisms)

Absconding time limit for shift



# Preventing irregular departures, Fighting migrant smuggling and promoting cooperation on return and readmission and legal pathways



-  Strengthening border management authorities' capacities
-  Migration dialogues with priority partner countries
-  Information campaigns
-  Dedicated and tailor-made Anti-Smuggling Operational Partnerships with partner countries, Member States and UN agencies tackle smuggling in key locations.
-  The Commission launched a Call to Action for a Global Alliance to Counter Migrant Smuggling
-  Developing legal migration must also go hand in hand with strengthened cooperation on return and readmission.
-  **Talent partnerships** have been launched with Morocco, Tunisia, Egypt, Pakistan and Bangladesh.
-  **EU Talent Pool** launched In November 2023



# New Pact: major improvements



## SCREENING OF IRREGULAR MIGRANTS



### Status Quo

Differing national practices

### New Pact

Uniform across the EU  
(identity, health and security check)

## SOLIDARITY



Ad hoc, voluntary solidarity

### New Pact

Permanent, legally binding and flexible solidarity mechanism

## RESPONSIBILITY RULES



Ineffective responsibility criteria and procedures

More stable responsibility criteria and efficient procedures

## EURODAC DATABASE



Limited functionalities linked to applying the responsibility rules

Fully fledged database for managing asylum and irregular migration

## RECEPTION



Limited flexibility and preparedness in the management of reception

More flexibility and preparedness in the management of reception

## BORDER PROCEDURE



Optional

Mandatory for certain categories

## CRISIS MEASURES



None

Dedicated Crisis Instrument + Blueprint

## RESETTLEMENT FRAMEWORK



Ad hoc resettlement schemes

EU Resettlement Framework to enhance legal pathways to protection

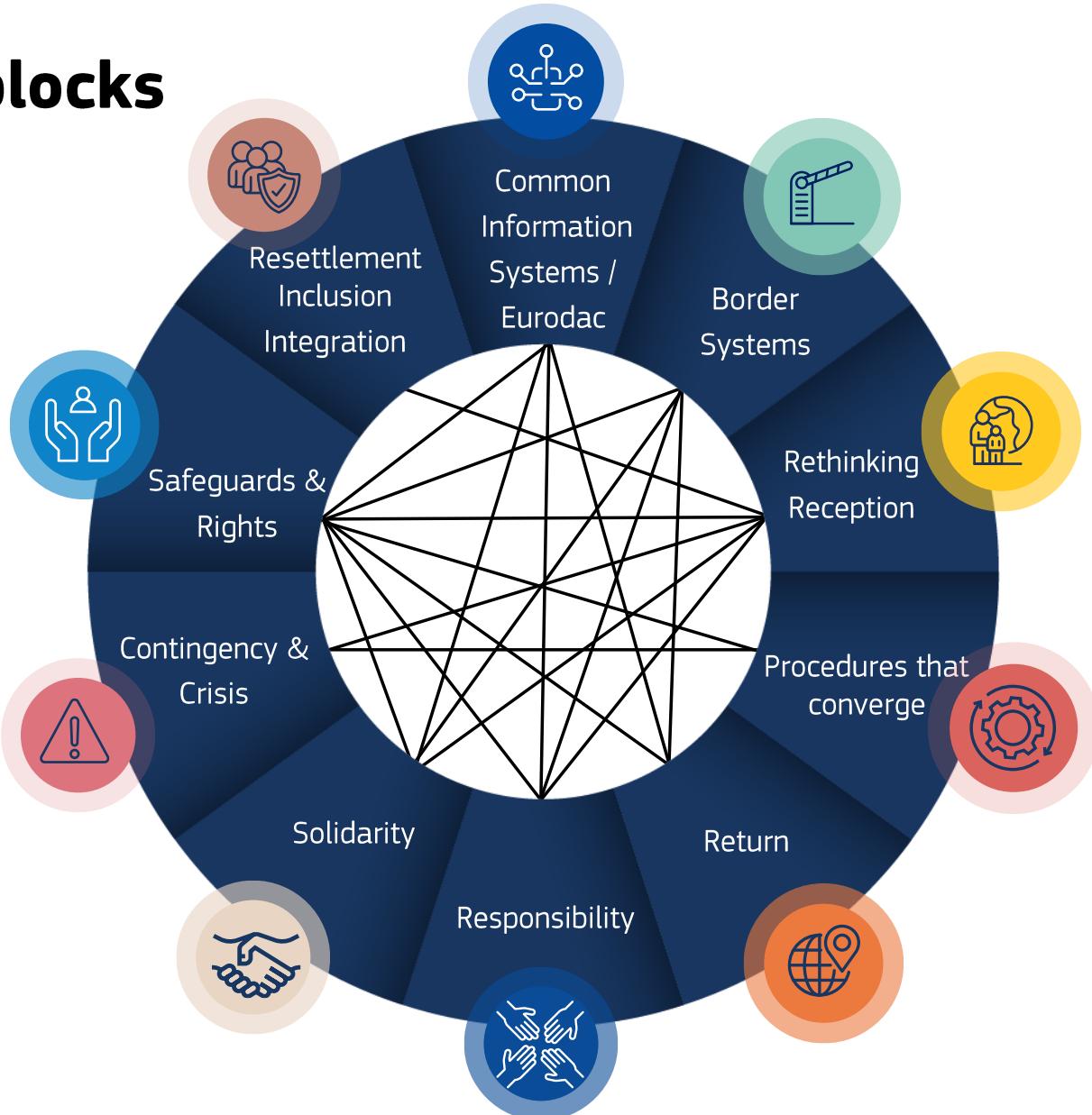


# 10 building blocks



## EXTERNAL DIMENSION

- Return and Readmission
- Anti-smuggling
- Strategic Partnerships
- Legal Pathways





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# EUROPEAN ASYLUM AND IMMIGRATION

*What European lawyers need to know*

Fabiane Baxewanos

**The Council of Europe's system on asylum and immigration: instruments  
and case law**

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# Overview



1. General remarks
2. Key legal provisions – ECHR
3. Key case law – ECtHR
4. Conclusions

# 1. General remarks



- Scope
- History
- Toolbox
- Top courts' functioning: CJEU vs. ECtHR
- Interlinkages CoE and EU law system

## 2. Key legal provisions – ECHR

- Art 3 – Prohibition of torture
- Art 5 – Right to liberty
- Art 8 – Right to respect for private and family life
- Art 13 – Right to an effective remedy
- Art 4 Protocol No 4 – Prohibition of collective expulsion of aliens

### 3. Key case law – access

- *Hirsi Jamaa and Others v. Italy* – pushbacks at sea – [UNHCR intervention](#)
- *N.D. and N.T. v. Spain* – ‘hot returns’ at land borders – [UNHCR intervention](#)
- Pending: *S.S. and Others v. Italy* – ‘pull-backs’ – [UNHCR intervention](#)
- Pending: Grand Chamber ‘instrumentalization’ cases:
  - *R.A. and Others v. Poland* – [UNHCR intervention](#)
  - *C.O.C.G. and Others v. Lithuania* – [UNHCR intervention](#)
  - *H.M.M. and Others v. Latvia* – [UNHCR intervention](#)

### 3. Key case law – returns

- *M.S.S. v. Belgium and Greece* – Dublin transfers – UNHCR intervention
- *Ilias and Ahmed v. Hungary* – STC – UNHCR intervention
- *F.G. v. Sweden* – risk assessment – UNHCR intervention

R39 interim measures – UNHCR Practical toolkit on how to request R39 interim measures

## 4. Conclusions



- Relationship with EU law
- ECtHR's role and case-law
- UNHCR's judicial engagement and court interventions ([here](#) and [here](#))



# EUROPEAN ASYLUM AND IMMIGRATION

*What European lawyers need to know*

Noemí Alarcón Velasco

**Legal Assistance to immigrants and asylum seekers**

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# Introduction to Legal Assistance



- Addressing challenges in European legislation for migrants and refugees.
- Importance of access to justice as a fundamental right.
- **Article 47 CFR** emphasizes effective legal remedies and legal aid:

*“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an **effective remedy before a tribunal** in compliance with the conditions laid down in this Article.*

*Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.*

*Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”*



# International Safeguards for Access to Legal Assistance in Migration and Refugee Protection



**Access to justice** contains the access to a lawyer, to information provision, to free legal advise (legal aid) when necessary, to an effective remedy, to an interpreter → the right to be advised, defended, and represented.

## ECtHR Case law

- 1) M.S.S. v. Italy and Belgium: “*the lack of information concerning access to organisations which offer legal advice and guidance combined with the shortage of lawyers on the list drawn up for the legal aid system may also be an obstacle hindering access to a remedy and falls within the scope of Article 13 ECHR, particularly where asylum seekers are concerned*”.



# International Safeguards for Access to Legal Assistance in Migration and Refugee Protection



- 2) **Hirsi Jamaa and Others v. Italy:** To be available, asylum seekers must have **access to the information** about the existence of a remedy. It is their right to obtain sufficient information to be enabled to gain effective access to the relevant procedures and to substantiate a complaint.
- 3) No practical obstacles may unjustifiably hinder the access to and exercise of the remedy, including difficulties to access physically or to communicate with the responsible authority, the excessively short time to submit a claim **and the lack of interpreter and legal assistance** (*M.S.S. v. Belgium and Greece [GC]*, para. 290 and *I.M. v. France*, para. 130).
- 4) **Rahimi v. Greece:** the **leaflet** describing the complaints process against detention centres was not made **available in a language comprehensible for the applicant (a child)**, and, in conclusion, the remedy was not accessible.



# International Safeguards for Access to Legal Assistance in Migration and Refugee Protection



## CJEU Case law

- 1. Case C-821/19 – Commission v. Hungary (2021):** In this case, the CJEU ruled that Hungary violated EU law by criminalizing assistance to asylum seekers through its "Stop Soros" legislation. The Court found that such criminalization infringed upon the rights of asylum seekers to legal representation and the rights of individuals and organizations to provide lawful assistance. This decision underscored the importance of safeguarding access to legal aid and the role of civil society in supporting asylum seekers.
- 2. Case C-808/18 – Commission v. Hungary (2020):** The Court held that the practice of detaining asylum seekers in transit zones at its border violates EU asylum law, particularly the Asylum Procedures Directive, by restricting **effective access to asylum procedures and legal assistance**.
- 3. Case C-585/16 – Alheto v. Bulgaria (2018):** the CJEU emphasized the importance of effective judicial protection in asylum procedures. National courts must conduct a full and *ex nunc* examination of both facts and points of law when reviewing decisions on international protection. This includes assessing whether applicants had access to legal assistance and were able to effectively present their case.
- 4. Case C-348/16 – Sacko v. Italy (2017):** The Court addressed the right to an effective remedy under the Asylum Procedures Directive. It ruled that Member States must ensure that applicants have the opportunity to be heard and to present their case effectively, which encompasses the right to legal assistance during the appeal process against a negative asylum decision.



# Legal Assistance/Representation/Aid

**Regulation (EU) 2024/1348 (14 May 2024) establishing a common procedure for international protection (APR): articles 15 to 19**

**Article 15** establishes the core principles governing legal assistance in the context of asylum procedures:

- 1) *Applicants shall have the right to legal assistance and representation, at their own cost, in relation to the examination of their application at first instance.*
- 2) *Member States shall ensure that **free legal assistance and representation** is made available to applicants who lack sufficient resources, in relation to the examination of their application at first instance, and at least in the preparation of the legal remedy provided for in Article 53, including assistance with interpretation and translation, and access to the case file.*
- 3) *MS shall ensure that legal assistance and representation is provided by persons who are competent and qualified to provide such assistance, **under the law or regulations of the Member State concerned.***
- 4) *Legal assistance and representation shall be subject to the conditions laid down in Article 54.*



# Legal Assistance/Representation/Aid

- New concept of **free legal counselling** at administrative stage (article16):

When? Who? What does it include? Is it similar as a legal advice?  
→ No concrete definition for a regulation

- Legal assistance and representation is provided by persons who are competent and qualified to provide such assistance, under the law or regulations of the MS concerned.
- Responsibility for implementing legal aid under the Pact rests with the Member States, in line with their national legal systems.
- Challenges



# CCBE recommendations/suggestions

- **Suggestions regarding free legal counselling**

[https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/MIGRATION/MIG\\_Letters/EN\\_MIG\\_20250218\\_CCBE-suggestions-regarding-free-legal-counselling.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Letters/EN_MIG_20250218_CCBE-suggestions-regarding-free-legal-counselling.pdf)

- **Recommendations on a framework on legal aid in the field of migration and international protection**

[http://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/MIGRATION/MIG\\_Position\\_papers/EN\\_20221125-CCBE-recommendations-on-a-framework-on-legal-aid-in-the-field-of-migration-and-international-protection.pdf](http://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Position_papers/EN_20221125-CCBE-recommendations-on-a-framework-on-legal-aid-in-the-field-of-migration-and-international-protection.pdf)